

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
IDA A.. ROGERS }

Appearances:

For Appellant: H. M. Kruse, Public Accountant
For Respondent: Burl D. Lack, Chief Counsel;
Crawford H. Thomas, Associate Tax
Counsel; Paul Ross, Associate Tax
Counsel

O P I N I O N

This appeal is made pursuant to Section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Ida A. Rogers to a proposed assessment of additional personal income tax in the amount of \$144.40 for the year 1948.

Appellant is the widow of Leslie F. Rogers, who died in 1947. At the time of Mr. Rogers' death he was, and had been for many years, the president of the Leslie F. Rogers Co. As an officer of the company he was paid a salary of \$1,000 per month,

Shortly after the death of Mr. Rogers, the directors of the Leslie F. Rogers Co, authorized the payment of \$1,000 per month to Appellant for a period of nine months. Pursuant to this authorization she was paid the sum of \$5,000 during the year 1948. The corporation claimed this amount as a deduction from gross income on its State and Federal returns for that year.

Appellant was not an employee of the Leslie F. Rogers Co. and had not performed any services for the company. The Franchise Tax Board concedes that decedent's employment by the Leslie F. Rogers Co. did not in any way obligate the corporation to make the payments in question to his widow.

The only issue in this appeal is whether the sum of \$5,000 paid to Appellant by the Leslie F. Rogers Co. in 1948 was paid as compensation, as contended by the Franchise Tax Board, or as a gift to Appellant, excludible from her gross income under Section 17126 of the Personal Income Tax Law.

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The determination of this question turns on the intention of the payor. Bogardus v. Commissioner, 302 U.S. 34.

Voluntary payments made to a widow of a deceased employee by his former employer have been held in numerous decisions of the United States Tax Court to constitute gifts which are exempt from taxation. Illustrative are Louise K. Aprill, 13 T.C. 707; Alice M. MacFarlane, 19 T.C. 9; Ruth Hahn, T.C.M. Dkt. No. 44682, March 31, 1954; Estate of Arthur W. Hellstrom, 24 T.C., Dkt. No. 52812, August 19, 1955; Elizabeth Robinson Matthews, T.C.M., Dkt. Nos. 55433, 57765, February 29, 1956.

The facts which have so consistently persuaded the Tax Court that such payments were intended as gifts, rather than compensation, are summarized in the Hellstrom opinion, as follows?

"We think the controlling facts here which establish the payment in question as a gift are that the payment was made to petitioner and not to her husband's estate; that there was no obligation on the part of the corporation to pay any additional compensation to petitioner's husband; it derived no benefit from the payment; petitioner performed no services for the corporation and, as heretofore noted, those of her husband had been fully compensated for, We think the principal motive of the corporation in making the payment was its desire to do an act of kindness for petitioner. The payment, therefore, was a gift to her and not taxable income,"

We find no material difference in the facts therein enumerated and the factual situation presented in this appeal, It is our opinion, accordingly, that the payments here in question were paid to the Appellant as a gift.

The cases cited to us by the Franchise Tax Board in support of its contention that the amounts in question were paid to Appellant as compensation are distinguishable on their facts and are without application in this appeal, Willkie v. Commissioner, 127 Fed. 2d 953; Botchford v. Commissioner, 81 Fed. 2d 914 and Noel v. Parrott, 15 Fed. 2d 669, were concerned with payments made directly to an employee. Estate of Bausch v. Commissioner, 186 Fed. 2d 313, involved payments made to a deceased employee's estate pursuant to a pre-existing practice of the employer. In Varndoe v. Allen, 158 Fed. 2d 467, and Estate of Arthur W.

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Davis, et al, T.C.M. Dkt. Nos. 32286 and 36717, July 31, 1952, the payments were made to the widow of a deceased employee of the payor but were in discharge of a prior obligation arising from the employment,

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Ida A. Rogers to a proposed assessment of additional personal income tax in the amount of \$144.40 for the year 1948 be and the same is hereby reversed.

Done at Sacramento, California, this 27th day of November; 1956, by the State Board of Equalization.

Paul R. Leake, Chairman

James H. Quinn, Member

Geo. R. Reilly, Member

Robert E. McDavid, Member

Robert C. Kirkwood, Member

ATTEST: Dixwell L. Pierce, Secretary